



DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



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**SUBJECT: INVESTIGATION AND RESOLUTION OF COMPLAINTS
PROCEDURES**

1.0 PURPOSE

The purpose of this policy is to establish guidelines for the investigation and resolution of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy.

2.0 POLICY

These procedures govern investigation and handling of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment and Retaliation Policy.

3.0 APPLICABILITY

Clarification
added.

This policy applies to all employees of the Department of Public Safety (DPS) regardless of their employment relationship with the Department. This policy further extends and applies to all applicants for employment, contractors, employees or clients of DPS sub-recipients, and all clients of the Department of Public Safety.

4.0 REFERENCES

- A. Personnel Board Rule 1NMAC7.4
- B. Title VII of the Civil Rights Act of 1964 as amended
- C. The Human Rights Act
- D. Americans with Disabilities Act, as amended
- E. Civil Rights Act of 1991

5.0 DEFINITIONS

The definitions contained in the Department of Public Safety's Anti-Discrimination, Harassment and Retaliation Policy apply herein.

6.0 PROCEDURE

If upon receipt of a complaint involving allegations of discrimination, sexual or racial harassment or retaliation, or at any time during the investigation, the EEO Officer reasonably believes that immediate corrective or preventative action is required to assure the safety or well-being of the complainant, the EEO Officer shall recommend to the Secretary and/or the Chief that temporary corrective action (other than an adverse action against the complainant) be taken pending the resolution of the complaint. Such action, when warranted, may include separating the complainant and respondent, or temporarily removing the respondent, with no loss of pay, from the workplace. The Secretary and/or the Chief shall make the determination on temporary corrective action in consultation with the EEO Officer.

If the Secretary and/or the Chief determine that a report of discrimination, harassment, or retaliation is appropriately referred for criminal investigation, a criminal investigation

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referral shall be made by the Secretary and/or the Chief or the Secretary if the Chief is involved in the complaint. The Chief or the Secretary, including if the Chief is involved, will also take the necessary steps to transfer, reassign, place on administrative leave, or otherwise remove the respondent from workplace contact with the complainant to assure the well-being and safety of the complainant. Complainant will be informed when a particular report is referred for criminal investigation.

A. Informal Resolution Procedure

1. Immediately upon receipt of a complaint of sexual harassment, racial harassment, retaliation, or any other discriminatory act, and following review of the central registry, described below, the DPS EEO Officer will make an initial determination as to whether the acts complained of are amenable to mediation.
2. If the EEO Officer determines that the acts complained of are amenable to mediation the EEO Officer shall consult with the complainant. If the complainant is willing to have his or her complaint mediated, then the EEO Officer shall attempt mediation. In no event shall mediation be conducted regarding any of the following complaints;
 - a. Allegations of threats, violence, intimidation, physical touching, assault or retaliation involving any of the aforementioned conduct;
 - b. In any situation where the respondent has previously been counseled or disciplined for discrimination, sexual or racial harassment or retaliation;
 - c. In any situation where the respondent has previously entered into a mediation agreement.
3. If mediation is successful, a written agreement is prepared by the EEO Officer. The written agreement must be signed by both parties and approved by the EEO Officer and the Secretary and/or the Chief. A copy is kept in a confidential file in the EEO Office. Generally, the mediation agreement includes;
 - a. A pledge by the respondent not to engage in any behavior that could be construed as a violation of this policy;
 - b. A promise by the respondent not to retaliate against the complainant;
 - c. The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discrimination, harassment, and any other relief necessary to remedy the situation;
 - d. A procedure for monitoring compliance with the agreement.
4. If the complaint **can** be resolved informally, the Formal Resolution Procedure detailed herein will not be followed and no report will be issued. A copy of the written mediation agreement will be provided to the Secretary and/or Chief and maintained in the central registry along with the complaint. A copy of the mediation agreement will also be provided to the complainant and respondent.
5. If the complaint **cannot** be resolved informally, the complaint shall follow the Formal Resolution Procedure in this Policy. The Informal Resolution Procedure is not required prior to initiating the Formal Resolution Procedure.

Clarification added.

B. Formal Resolution Procedure

1. Investigation
 - a. When a complaint is to be handled through formal procedures, the Department is responsible for ensuring that an impartial investigation begins

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within ten (10) working days after the EEO Officer's receipt of a written or oral complaint, regardless of whether the complaint was first received by a supervisor or directly by the EEO Officer.

- i. In the case of complaints, which are initially but unsuccessfully addressed through informal procedures, the Department is responsible for ensuring that an impartial investigation begins within ten (10) working days of mediation failure.
 - ii. Whether a complaint is handled through formal or informal procedures, in the case of an oral complaint received directly by the EEO Officer or which, for any reason, has not been reduced to writing on the Discrimination, Harassment and Retaliation Complaint Form, the EEO Officer shall fill out the Discrimination, Harassment and Retaliation Complaint Form, then obtain the complaining employee's signature on it, verifying that it accurately reflects the employee's report.
 - iii. If an employee refuses to sign the Discrimination, Harassment and Retaliation Complaint Form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.
 - iv. The Department attempts to complete investigations within fifteen (15) working days. Except in the most unusual circumstances, investigations must be completed within thirty (30) working days unless a longer period of time is authorized by the Secretary after his review of a written request by the EEO Officer justifying the need for more time.
 - v. The pendency of a criminal investigation and/or prosecution shall provide sufficient justification to delay the EEO Officer's investigation in order to not compromise the criminal investigation and/or prosecution.
 - vi. The complainant and the respondent shall be apprised of the progress of the investigation and the estimated completion date of the investigation not less than every fifteen (15) days.
- b. The Department shall appoint a qualified EEO officer, or, if necessary, to expedite the resolution of a complaint or resolve any potential conflict of interest, a competent independent outside investigator to conduct the investigation, and when the complaint of discrimination, sexual or racial harassment or retaliation is against the EEO Officer, the investigation shall be conducted by a competent independent investigator appointed by the Secretary in accordance with these procedures.
 - c. All interviews with the complainant, respondent, and witnesses **shall** be recorded and preserved.
 - d. The EEO Officer shall contact the respondent, give him or her a copy of the complaint, solicit the respondent's account of the alleged incidents, and inform the respondent that a recommendation and report will be prepared.
 - e. The EEO Officer shall interview the complainant, the respondent, and any witnesses identified by the complainant or the respondent or otherwise brought to the EEO Officer's attention or whom the EEO Officer believes may have relevant information. Witnesses should not be limited only to those who directly observed the complained about events, and may include others with knowledge of the working environment, the complainant or the respondent.
 - f. All individuals interviewed shall be informed that the DPS does not tolerate retaliation against any individual who opposes what s/he reasonably believes to be sexual or racial harassment, retaliation, or any other discrimination or

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who cooperates in good faith in the investigation of a complaint of sexual or racial harassment, retaliation, or any other discrimination.

- g. All aspects of the complaint and investigation shall be held in the strictest confidence by all parties and the EEO Officer, except to the extent reasonably necessary to resolve the complaint or implement any remedial action or discipline imposed. Witnesses, the complainant, and the respondent shall not discuss their statements with each other or other employees except as may be necessary to resolve the complaint or to implement any remedial action or discipline imposed.
- h. As part of the investigation, the EEO Officer shall review the central registry, described below, to determine whether prior complaints of discrimination or harassment have been made by the complainant or against the respondent, and the outcome of any prior complaints.
- i. As part of the investigation, the EEO Officer shall determine if any supervisor was aware of the discrimination, harassment or retaliation and did not report or respond to it.

2. Report and Recommendation

- a. Following completion of the investigation, the EEO Officer shall make an assessment of the following;
 - i. All of the facts and circumstances surrounding the complaint and the working environment;
 - ii. The credibility of the complainant, the respondent, and any witnesses; and
 - iii. The existence of prior complaints and their resolution.
- b. Based on this assessment, the EEO Officer shall arrive at a determination about whether the discrimination, harassment or retaliation occurred.
- c. No complaint shall be dismissed, or found to be unsubstantiated, solely because no witnesses other than the complainant and the respondent are available.
- d. The EEO Officer shall prepare a written report and recommendation promptly following the completion of the investigation. Except in the most unusual circumstances, the report must be completed within fifteen (15) working days after the completion of the investigation. Extensions beyond fifteen (15) working days must be authorized by the Secretary, after his review of a written request by the EEO Officer justifying the need for more time.

3. The report and recommendation must include:

- a. A summary of the complaint;
- b. A summary of the response by the individual charged with discrimination, harassment or retaliation;
- c. A summary of the statements and evidence obtained during the investigation;
- d. A finding of whether a violation of this policy occurred and an explanation supporting the finding along with a finding of whether any supervisor was or should have been aware of the violation and failed to report or respond to it.
- e. If a violation occurred, the finding must include a statement about the severity of the violation.

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- f. If the complaint of discrimination, sexual and/or racial harassment and/or retaliation is determined to be unfounded, the EEO Officer's finding may also include a determination as to whether the complaint was made in bad faith.
 - i. In no event shall this finding be made without first providing the complainant the opportunity to respond to the allegations of bad faith.
 - ii. The complainant's response to any determination of bad faith shall be included in the report and recommendation;
- g. The credibility assessments of the complainant, the respondent, and the witnesses explaining the basis for the credibility assessments;
- h. A summary of known prior mediation agreements/settlements or substantiated complaints against the respondent;
- i. Include a recommendation of discipline against the respondent, if appropriate, along with an explanation for the particular disciplinary action recommendation. A recommendation of specific disciplinary action is mandatory when the EEO Officer determines that the respondent has engaged in discrimination, sexual or racial harassment or retaliation.
- j. A recommendation of remedial action and/or discipline against a supervisor who knew or should have been aware of the discrimination, harassment or retaliation and did not report or respond to it, if appropriate, along with an explanation for the particular remedial or disciplinary action recommendation;
- k. A recommendation, as to the restoration of any employment terms, conditions, or opportunities the complainant might have lost as a result of discrimination, sexual or racial harassment or retaliation;
- l. An appendix containing the complaint, statements of the complainant and the respondent, witness statements, and other evidence obtained during the investigation.

C. Final Resolution of Complaint

- 1. A copy of the report and recommendation shall be sent to the Secretary and/or the Chief.
- 2. The Chief, in the case of law enforcement personnel, and the Secretary, in the case of civilian personnel, shall make the final determination as to the remedial action and/or discipline, if any, to be imposed after consultation with the EEO Officer.
- 3. If the Chief is being investigated, the determination as to the discipline to be imposed shall be made by the Secretary.
- 4. Disciplinary action is mandatory when the EEO Officer determines that the respondent has engaged in discrimination, harassment or retaliation.
 - a. The mandatory minimum discipline applicable to complaints subject to the Formal Resolution Procedure is a written reprimand.
 - b. The maximum discipline applicable to complaints subject to the Formal Resolution Procedure is dismissal.
- 5. After consideration of the report, the Secretary and/or the Chief shall make a determination as to whether to take one or more of the following courses of action:

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- a. Sustain the complaint, order the discrimination, harassment or retaliation to stop, impose appropriate discipline on the respondent, recommend the restoration of any employment benefit the complainant lost because of the discrimination, harassment or retaliation, and provide any other relief necessary, within their purview, to remedy the situation;
 - b. Order further investigation and require a supplementary report and recommendation;
 - c. Dismiss the complaint, if it is found to be without merit. The Secretary and/or the Chief may take disciplinary action against the complainant if they agree with the investigation's findings that the complaint was made in bad faith.
6. If the EEO Officer finds that discrimination, sexual or racial harassment or retaliation occurred and the Secretary and/or the Chief determine that disciplinary action should be taken which is less severe than that recommended by the EEO Officer, the Secretary and/or the Chief shall prepare a written memorandum, to be appended to the EEO Officer's report and recommendation, explaining the basis for the downward deviation.
7. Once the Secretary and/or the Chief have approved the recommendation and report:
 - a. Respondent shall be provided with a copy of the report and recommendation only in cases where the complaint is sustained;
 - b. An employee complainant shall be provided a separate report that includes:
 - i. A summary of the complaint;
 - ii. A summary of the response by the individual charged with discrimination, harassment or retaliation;
 - iii. A finding of whether a violation of this policy occurred and an explanation supporting the finding; and
 - iv. A statement regarding whether disciplinary action has been recommended. This statement shall not detail the discipline recommended.
 - c. The EEO Officer shall meet with the employee complainant to explain the decision;
 - d. Client complainants shall be informed in writing that the investigation was completed and that the Department has taken appropriate action.
8. The respondent's division director and/or supervisor shall meet with the respondent to explain the decision and implement any remedial action and/or discipline in accordance with the Department's Discipline Policy and/or any other rules, regulations, or laws.
9. The respondent is provided with a copy of the report solely to assist him or her in exercising his or her rights under the Department's Discipline Policy. The contents of the report are to be kept confidential except for this purpose and not to be disseminated for any other purpose.
10. Either party can respond in writing to the report and decision as a formal rebuttal to be included in the official file. If disciplinary action is taken, the respondent may exercise his or her rights under the Department's Discipline policy and/or any other rules, regulations, or laws.

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11. The supervisor of an individual found to have violated the Anti-Discrimination, Harassment and Retaliation Policy is responsible for monitoring the individual's compliance with any mediation agreement or recommendation approved by the Secretary and/or the Chief. The supervisor must make his or her best efforts to ensure that the discrimination, harassment or retaliation does not recur and that the complainant is not subjected to retaliation by the individual found to have violated this policy or by other co-workers.
12. The Secretary and/or the Chief shall insure that any disciplinary action imposed by the Secretary and/or the Chief is implemented subject to the right of the respondent to challenge the disciplinary action in accordance with the DPS' policy regarding discipline and any other rules, regulations, or other laws.

D. Confidentiality

All inquiries, complaints, and investigations under this policy will be confidential. Information is revealed strictly on a need-to-know basis.

E. Central Registry

A copy of the complaints of sexual and racial harassment, retaliation and other discrimination, the tape recorded interviews and all other evidence, and the investigation report and the final decision, or mediation agreement shall be kept in a central registry for a minimum of ten years, indexed by the name of the complainant and respondent, and accessible by the EEO Officer, in a secured, confidential file in the EEO Office.

F. Annual Analysis of Grievances

The EEO officer shall coordinate with the Standards Bureau commander to provide information related to discrimination grievances filed at the end of every year. This shall be done in order for the Standards Bureau commander to conduct the annual analysis of grievances as described in *ADM: 03 Grievances*. The Standards Bureau commander shall include "generic" information in their final report that does not reveal any confidential information about the discrimination grievances, but shows an analysis has been conducted. The Standards Bureau commander and EEO officer shall ensure no confidential information is revealed regarding grievances filed.

G. Rights of the Complainant

The procedures under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination, sexual harassment, racial harassment, or retaliation under state or federal laws.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: _____
s/ Gorden E. Eden Jr.
DPS Cabinet Secretary

DATE: _____
May 03, 2013